

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CHARLES ELLIS, SR.,

Plaintiff,

v.

KERN COUNTY SHERIFF
DEPARTMENT, et al.,

Defendants.

No. 1:22cv-01209-JLT-SAB (PC)

ORDER DENYING PLAINTIFF'S SECOND
MOTION FOR APPOINTMENT OF
COUNSEL, WITHOUT PREJUDICE

(ECF No. 33)

Plaintiff is proceeding pro se and in forma pauperis in this civil rights action filed pursuant to 42 U.S.C. § 1983.

Currently before the Court is Plaintiff's second motion for appointment of counsel, filed September 28, 2023. Plaintiff seeks appointment of counsel because he is incarcerated in a county jail, he is suffering medical issues, and has limited legal knowledge and research capability.

Plaintiff does not have a constitutional right to appointed counsel in this action, Rand v. Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997), and the court cannot require any attorney to represent plaintiff pursuant to 28 U.S.C. § 1915(e)(1). Mallard v. United States District Court for the Southern District of Iowa, 490 U.S. 296, 298 (1989). However, in certain exceptional circumstances the court may request the voluntary assistance of counsel pursuant to section

1 1915(e)(1). Rand, 113 F.3d at 1525.

2 Without a reasonable method of securing and compensating counsel, the court will seek
3 volunteer counsel only in the most serious and exceptional cases. In determining whether
4 “exceptional circumstances exist, the district court must evaluate both the likelihood of success
5 on the merits [and] the ability of the [plaintiff] to articulate his claims pro se in light of the
6 complexity of the legal issues involved.” Id. (internal quotation marks and citations omitted).

7 In the present case, the Court does not find the required exceptional circumstances. Even
8 if it assumed that Plaintiff is not well versed in the law and that he has made serious allegations
9 which, if proved, would entitle him to relief, his case is not exceptional. The Court is faced with
10 similar cases almost daily. While the Court recognizes that Plaintiff is at a disadvantage due to
11 his pro se status and his incarceration, the test is not whether Plaintiff would benefit from the
12 appointment of counsel. See Wilborn v. Escalderon, 789 F.2d 1328, 1331 (9th Cir. 1986) (“Most
13 actions require development of further facts during litigation and a pro se litigant will seldom be
14 in a position to investigate easily the facts necessary to support the case.”) The test is whether
15 exception circumstances exist and here, they do not. At this early stage of the proceedings, the
16 Court cannot determine that Plaintiff is likely to succeed on the merits and the Court finds that
17 Plaintiff had adequately litigated this action to date. Moreover, the fact an attorney may be better
18 able to perform research, investigate, and represent Plaintiff does not change the analysis. There
19 is little doubt most pro se litigants “find it difficult to articulate [their] claims,” and would be
20 better served with the assistance of counsel. Wilborn, 789 F.2d at 1331. For this reason, in the
21 absence of counsel, federal courts employ procedures which are highly protective of a pro se
22 litigant's rights. See Haines v. Kerner, 404 U.S. 519, 520 (1972) (holding pro se complaint to less
23 stringent standard) (per curiam). In fact, where a plaintiff appears pro se in a civil rights case, the
24 court must construe the pleadings liberally and afford the plaintiff any benefit of the doubt.
25 Karim–Panahi v. Los Angeles Police Dep’t, 839 F.2d 621, 623 (9th Cir. 1988). The rule of liberal
26 construction is “particularly important in civil rights cases.” Ferdik v. Bonzelet, 963 F.2d 1258,
27 1261 (9th Cir. 1992). Thus, where a pro se litigant can “articulate his claims” in light of the
28 relative complexity of the matter, the “exceptional circumstances” which might require the

1 appointment of counsel do not exist. Wilborn, 789 F.2d at 1331; accord Palmer v. Valdez, 560
2 F.3d 965, 970 (9th Cir. 2009). Accordingly, Plaintiff's second motion for the appointment of
3 counsel is denied, without prejudice.

4
5 IT IS SO ORDERED.

6 Dated: **October 2, 2023**


UNITED STATES MAGISTRATE JUDGE